

## Title Exception Guide for NRCS Conservation Easement Programs

Following is a general guide of how common title exceptions should be handled for the NRCS conservation easement programs. The following is only intended as a guide and does not supersede any advice from the USDA Office of General Counsel or instructions from NRCS or take into account special circumstances that may result in handling a particular exception in a different manner. Any exceptions not determined to be acceptable must be removed or subordinated.

<b>Description of Title Exception</b>	<b>ACEP-ALE Easements</b>	<b>Non-ACEP-ALE Easements</b>
Lack of Right of Access	Generally must be removed.	Must be removed.
Access Subject to Terms and Conditions of xxxx	Generally must be removed; review referenced document to determine whether conditions of access are acceptable.	Generally must be removed; review referenced document to determine whether conditions of access are acceptable.
Taxes for Current Year, Due But Not Yet Payable	Generally acceptable.	Generally acceptable.
Outstanding Taxes for a Previous Year	Must be removed.	Must be removed.
Liens and Judgments	Must be removed.	Must be removed.
Mortgage or Deed of Trust	Must be removed or subordinated.	Must be removed or subordinated.
Utility Right of Way	Generally acceptable subject to determination that inclusion will not impact the purposes of the easement.	Generally acceptable if the right of way does not allow improvement (such as paving, mowing, etc.) and subject to determination that inclusion will not impact the purposes of the easement.
County Road	County road should not be within boundaries of easement – therefore should be removed.	County road should not be within boundaries of easement – therefore should be removed.
Change in Boundary Due to Accretion or Avulsion of Waterway	Generally acceptable.	Generally acceptable.
Public Right to Body of Water	Generally acceptable.	Generally acceptable.
General Exception for Mineral Interests	Generally must be removed, refer to mineral matrix for additional guidance.	Generally must be removed, refer to mineral matrix for additional guidance.
Reserved Mineral Rights	Generally must be removed or subordinated, refer to mineral matrix for additional guidance.	Generally must be removed or subordinated, refer to mineral matrix for additional guidance.

<b>Description of Title Exception</b>	<b>ACEP-ALE Easements</b>	<b>Non-ACEP-ALE Easements</b>
Life Estate	Generally must be removed if landowner only holds life estate or if another person who does not sign the deed owns a life estate.	Generally must be removed if landowner only holds life estate or if another person who does not sign the deed owns a life estate.
Terms and Conditions of NRCS Conservation Easement Deed	Generally acceptable.	Generally acceptable.
Existing Conservation Easement	Only acceptable if the terms of the existing easement offer less protection than the proposed NRCS easement and the terms are compatible.	Only acceptable if the terms of the existing easement offer less protection than the proposed NRCS easement and the terms are compatible.
Within Boundaries of Irrigation or Diking District	Generally acceptable.	Only acceptable if determination is made that rights of irrigation district will not interfere with the purposes of the conservation easement.
Flowage Easement	Generally acceptable if it does not interfere with agricultural viability.	Only acceptable if the flowage easement does not allow for the removal of soil or vegetation or otherwise interfere with the restoration and management of the easement.
Leases or Easements for Wind or Solar Energy Development	Must be removed or subordinated unless determined compatible with agricultural uses of the land.	Must be removed or subordinated.
Agricultural Leases	Generally acceptable when subordinated.	Must be terminated prior to acquisition, unless it is a grazing lease on a WRE or HFRP easement.
Public Access Easements or Hunting Leases	Generally acceptable unless use levels interfere with easement purposes.	Generally acceptable unless use exceeds levels authorized in the deed.
Bankruptcy	Consult with a realty specialist before proceeding.	Consult with a realty specialist before proceeding.
Existing Covenants, Restrictions, Contracts for Sale, Options, or Rights of First Refusal	Consult with a realty specialist before proceeding.	Consult with a realty specialist before proceeding.

<b>Description of Title Exception</b>	<b>ACEP-ALE Easements</b>	<b>Non-ACEP-ALE Easements</b>
Previously Reserved Rights	Review reserved right; determine impact; accept or require subordination or release.	Review reserved right; determine impact; accept or require subordination or release.
Unrecorded Leases and Tenancies	Generally acceptable for the title commitment but must addressed in the certificate of use and consent.	Generally acceptable for the title commitment but must addressed in the certificate of use and consent.
Ingress/Egress to an Adjacent Landowner	Generally acceptable as long as the scope and location of ingress/egress is fully described; treat this similar to a road.	Generally acceptable as long as the scope and location of ingress/egress is fully described; treat this similar to a road.
Other Exceptions of Record	Must be removed.	Must be removed
Other Exceptions Not of Record	Generally acceptable.	Generally acceptable.
Gap Check (i.e., items appearing after the date of the title commitment but prior to closing)	Must be removed.	Must be removed.